

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2011CP0704713

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JUN 17 2014

SC Court of Appeals

Jonetha Singleton.....Appellant,

v.

Starshaka N. Cuthbert.....Respondent.

APPELLANT'S REPLY TO RESPONDENT'S MOTION FOR EXTENSION OF TIME TO
FILE FINAL BRIEF AND CORRECT RECORD ON APPEAL

Respondent has filed a Motion with the Court for an extension of time to file her Final Brief and correct the Record on Appeal. Respondent's Motion for extension is based upon the need to correct the record before filing her brief.

In her Motion Respondent references several trial transcript pages which she claims has been omitted. Appellant responds as follows specifically referencing each page or group of pages by trial transcript number(s) Respondent says is omitted:

- 1.) Tr. p. 146: This page is included in the Record on Appeal as page 18. However, inadvertently missing are Tr. pp. 142-143. These pages should be included and Appellant

requests these pages be included in any correction of the Record on Appeal.

2.) Tr. pp. 160, 165-167: These pages were inadvertently omitted and should have been included.

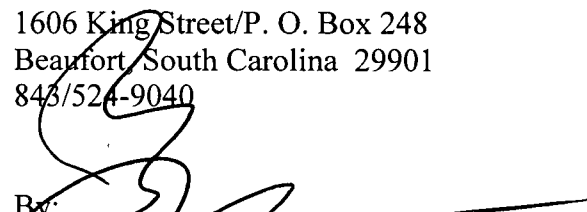
3.) Tr. p. 161: This page was never included in the Designation of Matter to be Included in the Record on Appeal by either party and should not be included.

Appellant joins in Respondent's Motion to correct the Record on Appeal by allowing a Supplemental Record on Appeal to include trial transcript pages 142-143, 160, and 165-167.

Further, Appellant has no objection to the Court granting Respondent an extension of time to file her Final Brief. Appellant would only respectfully request that, if the Court should allow the filing of a Supplemental Record on Appeal, that the time requirements for filing same allow for Appellant's counsel being out of the country from June 25-July 4, 2014.

Respectfully Submitted,

LAW OFFICE OF BERNARD McINTYRE
1606 King Street/P. O. Box 248
Beaufort, South Carolina 29901
843/524-9040

By: 
Bernard McIntyre, Esquire
S.C. Bar No. 003843
Attorney for Appellant

June 12, 2014

1 MR. ROSS: All right. Thank you. That's all I
2 have.

3 Your Honor, the defense rests.

4 THE COURT: Anything else witness or evidence
5 wise?

6 MR. ROSS: No, Your Honor.

7 THE COURT: All right. Jurors, I've got to take
8 up a few things with the attorneys. Just step out.
9 And don't talk about the case quite yet.

10 [Whereupon, the jury exits the courtroom at
11 9:41 a.m.]

12 THE BAILIFF: The jury is clear, Your Honor.

13 THE COURT: All right. Now what are y'all up
14 to?

15 - - - - -

16 MOTION FOR A DIRECTED VERDICT

17 MR. MCINTYRE: The first thing, Your Honor, the
18 plaintiffs respectfully -- of course, we move for a
19 directed verdict on the issue of liability. I don't
20 know -- I don't think I need to recount the evidence.
21 But, you know, just based on what the defense has put
22 up just here with the last witness who said that
23 according to her testimony, she -- as I understood it,
24 that the amber lights were activated, the door opened,
25 the stop arm was activated or actuated, the kids were

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1 actually boarding off the bus, the bus was at a
2 complete stop. And I think the defense wanted to lead
3 the witness into some other things to try to exonerate
4 the defendant but, unfortunately, she testified what
5 she said happened and the defendant ran the stop arm,
6 as well as the flashing lights and yellow lights and
7 the red light.

8 THE COURT: Well, here's the thing, though. She
9 says it was not stopped. You know, that's just one
10 against many. I can't help you.

11 MR. MCINTYRE: Well, under -- you know, if it
12 pleases the Court, under 56-5-27(c), it says that, you
13 know, a vehicle must not overtake the bus which has
14 amber visual signals actuated. That's what 27 -- 56-
15 5-27(c) says. You know, it doesn't say, Your Honor,
16 that the bus has to be stopped.

17 Even the defendant admitted, Your Honor, that
18 the amber lights were actuated. According to what
19 I recall, she say five seconds. But it doesn't --
20 56-5-27(c) --

21 THE COURT: All right. That's just a jury
22 question. You can argue all that to the jury. I'm
23 going to instruct that statute to the jury.

24 Here is the thing. I'm coming down and a bus,
25 you know, hits the amber lights, I don't -- if it's

1 offer the Court one illustration?

2 THE COURT: You can do whatever you want.

3 MR. MCINTYRE: Your Honor, if -- let's assume
4 that Ms. Singleton stopped behind the bus. Let's say
5 it was 500 yards, two football fields. Or, actually,
6 five football fields. She -- this statute does not
7 apply. And I'm using an extreme now --

8 THE COURT: That's exactly right.

9 But under the facts of this case, she violated
10 the statute because she wasn't 500 feet back. That's
11 all. She was right behind the bus.

12 MR. MCINTYRE: Judge, there's no testimony about
13 what distance she was behind the bus.

14 THE COURT: There is. There was a pick-up truck
15 right behind the bus and she's right behind it, under
16 everybody's testimony, and that's close enough to run
17 over a child if you take a left. Not that that
18 happened, of course. She was careful and didn't do
19 that.

20 It doesn't hurt you at all. I mean, that's a --
21 under her testimony, that's a violation of this
22 statute under the facts of the case. That's all. But
23 it doesn't mean that she's -- by turning, that she was
24 -- her action was a direct cause or a concurring cause
25 of the accident. I'm not ruling that.

1 prove is more likely so than not. If you could physically
2 weight evidence, her burden of proof would be more than
3 fifty percent.

4 Now, in this case the plaintiff has to convince
5 you jurors of three things: first, that the defendant was
6 negligent; second, that that negligence was a proximate
7 cause of the collision; and, third, that she sustained
8 injuries as a direct result of the collision. Now,
9 jurors, negligence is a failure to exercise due care under
10 the circumstances. It can rise from action or inaction,
11 omission or commission. The bottom line, in driving
12 scenarios, it's the failure to drive as an ordinary
13 reasonable person would have been driving at the time the
14 accident occurred. And there's no dispute in the case
15 that, you know, the accident happened. Fault is what is
16 at issue, as well as damages, if you find fault should be
17 rewarded on the plaintiff's part.

18 Now, anytime we drive, that's you, me, this
19 plaintiff, this defendant, we agree to do a couple of
20 things. And since you're going to be evaluating fault,
21 jurors, the law I'm telling you applies to both parties.
22 I'm not saying the plaintiff has to do this, the defendant
23 has to do that. It applies to everybody who drives. When
24 we operate a car, including these litigants, we just agree
25 to do a couple of things. One is we agree to exercise due

1 care for our safety and the safety of others on the
2 highway. We agree to comply with the common-law rules of
3 the road -- those are rules that aren't enacted by the
4 legislature -- and we agree to comply with all statutes
5 enacted governing the movement of vehicular traffic on the
6 highway. Common-law rules of the road are pretty simple.
7 You agree to drive your car in a reasonable, prudent
8 manner. You agree to keep a proper lookout. A proper
9 lookout doesn't mean just to have your eyes open. It
10 means observing what an ordinary, prudent driver would
11 have observed had he or she been paying attention. And we
12 agree to keep our vehicle under proper control. Proper
13 control means that at all times you should have your
14 vehicle under such control that you can slow down, speed
15 up, turn right or left, take evasive action to avoid
16 colliding with another vehicle or another object in your
17 path. A person who fails to keep a proper lookout or who
18 fails to keep his or her vehicle under proper control is
19 negligent. In addition, we agree and these litigants
20 agree, to comply with all statutes governing the movement
21 of vehicles on the highway. For instance, if there is a
22 posted speed limit and you go faster than the speed limit,
23 the law says you're negligent. In fact, the law says you
24 are negligent if you violate any statute. And that
25 applies to these litigants, it applies to you, when we are

1 stops, it has to be visible within 500 feet.

2 Now, the statute -- another statute says if you
3 are approaching flashing amber lights, stop sign, you have
4 to stop. You can't go ahead. Now, of course, you have to
5 have time to stop, also. If you're parallel with a bus,
6 the lights start flashing, you don't -- you are gone.
7 Y'all understand. I mean, statutes have a reasonable
8 interpretation. But bottom line, if you've got time to
9 stop, you've got to stop. If you're going too fast when
10 you see the bus, you had better slow down, you know, and
11 try to stop and so forth.

12 And I can read those to you, but that's
13 basically it. If you see flashing amber lights, amber
14 lights, tells you the bus is stopping or stopped, you need
15 to slow down. Stop sign comes out, got to stop. That's
16 another one, another statute.

17 Now, I mentioned to you that in order to
18 recover, the plaintiff has to convince you that the
19 defendant was negligent and that that negligence was a
20 direct cause of the collision. Approximate is the word,
21 but direct cause, cause but for which the accident
22 wouldn't have happened, is the terminology of what you
23 pass on. The defense's position is that the accident was
24 caused by sole negligence on the part of the plaintiff.
25 Issue in the case. The defense further says that if we

1 were negligent, which we deny, the plaintiff also was
2 negligent. And we ask you to compare the negligences
3 between the two parties. Now, here's what that means.
4 Oftentimes in car wrecks, both parties are somewhat at
5 fault. I'm not telling you both parties were at fault.
6 All I have said was that under the testimony of the
7 plaintiff, she violated the statute and that was
8 negligence. But that does not mean that she was at fault.
9 That is for you to decide. I am not making that
10 determination.

11 If you find both parties are at fault, you weigh
12 and evaluate the relative positions of the parties and
13 decide how much fault is to be attributed to both drivers.
14 The rule is, as I told you at the start, in order to
15 recover, the plaintiff has got to convince you that
16 negligence on the part of the defendant was equal to or
17 greater than any negligence on her part. So even if you
18 find the plaintiff was fifty percent negligent -- and I'm
19 not suggesting that she was -- the plaintiff would still
20 prevail. What you would do is you would reduce any
21 monetary award you gave her for actual damages by the
22 percentage of negligence you find on the part of the
23 plaintiff up to fifty percent. If you find the
24 plaintiff's negligence contributed to the accident by more
25 than fifty percent, the plaintiff doesn't win at all.

1 Okay. If the plaintiff was like ten percent negligent,
2 you reduce the award by ten percent; twenty percent,
3 twenty percent; thirty percent, thirty percent. Fifty-one
4 percent negligence on the part of the plaintiff, or more,
5 the plaintiff doesn't win at all. Okay.

6 Now, I mentioned that the plaintiff has the
7 burden of proof; the greater weight of evidence, on
8 negligence, causation and resulting injury. To the extent
9 that the defendant claims the plaintiff was negligent, the
10 plaintiff has the burden of proof on that issue. The same
11 burden of proof, preponderance of the evidence, because
12 they're saying -- you know, once they claim somebody else
13 does something, then they assume the burden of proof on
14 that and it's the same burden throughout.

15 Now, jurors, you have to decide the case based
16 upon the admitted evidence in the case. That includes
17 testimony, documents that have been introduced, photos and
18 so forth. You're entitled to weigh the testimony. And
19 I'm going to give you a couple of tests on evaluating
20 testimony. I'm not directing these to any particular
21 witness. It applies to anybody that testifies.
22 Obviously, you would take into account the appearance of
23 the witness, the demeanor of a witness. You would
24 consider whether a witness' testimony is consistent or
25 inconsistent. You would consider the opportunity the

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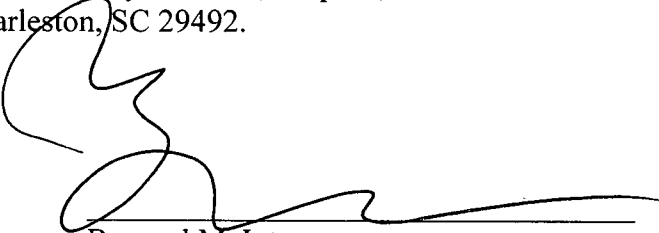
v.

Starshaka N. Cuthbert.....Respondent.

PROOF OF SERVICE

I certify that I served one (1) copy of Appellant's Reply to Respondent's Motion for Extension of Time to File Final Brief and Correct Record on Appeal on Respondent's counsel, Jeffrey A. Ross, Esquire, Clawson & Staubes, LLC, by depositing a copy of same in the United States Mail, postage prepaid, on June 13, 2014, addressed to Jeffrey A. Ross, Esquire, Clawson & Staubes, LLC, 126 Seven Farms Drive, Suite 200, Charleston, SC 29492.

June 13, 2014



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June 13, 2014

The Hon. Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
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Re: Appellant's Reply to Respondent's Motion for Extension of Time to File Final Brief and Correct Record on Appeal and Proof of Service in Jonetha Singleton v. Starshaka N. Cuthbert Case No. 2011CP0704713

Dear Ms. Kitchings:

Enclosed please find for filing the original of Appellant's Reply to Respondent's Motion for Extension of Time to File Final Brief and Correct Record on Appeal and Proof of Service in the matter referenced above.

I have also attached a copy of the Proof of Service and would appreciate your returning one (1) filed copy of same to me in the self-addressed, stamped envelope.

By copy of this correspondence to Jeffrey a. Ross, esquire, I am forwarding him a copy of Appellant's Reply to Respondent's Motion for Extension of Time to File Final Brief and Correct Record on Appeal and Proof of Service.

With kind regards, I am

Yours truly,


Bernard McIntyre, Esquire

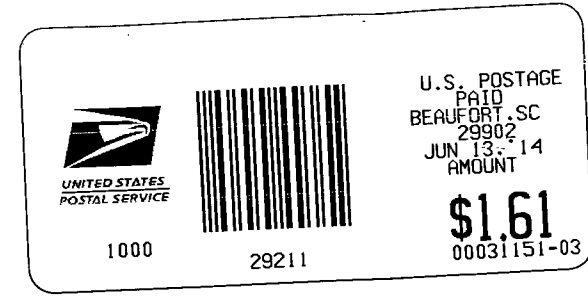
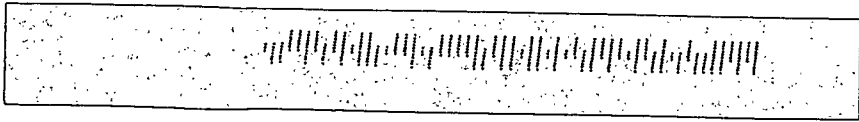
BMc

Cc: Jeffrey A. Ross, Esquire, Clawson & Staubes, LLC, w/enclos

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